

## State Procedures for Changes to Navigation Markers

### PROCEDURE FOR CHANGES TO NAVIGATION MARKERS

1. Draft the changes to the ordinance.
2. Ask Engineering to make a colored location map delineating the proposed zone. Have additional color copies printed in Graphics to be submitted to the City Council with the agenda item and proposed ordinance change. Get no less than 20 copies; 15 for Council, 1 FWC, 1 USCG, 1 DEP, 1 PC, 1 us.
3. Draft an agenda outlining the changes to the ordinance. It takes two months to get items before the City Council and approval at two meetings. Inform Official Records that you need a certified copy of the ordinance. When you get the signed adopted ordinance proceed to next step.
4. Fill out the Waterway Marker Application (attached) and submit it to the Florida Fish and Wildlife Conservation Commission, along with a copy of the adopted certified ordinance, the color location map and a cover letter explaining the reason for your request. THE REASON MUST COMPLY WITH THE FWC BOATING SAFETY AND WATERWAY MANAGEMENT SECTION UNIFORM WATERWAY MARKERS IN FLORIDA WATERS 68D-23.
5. The FWC letter of approval is the permit necessary to proceed requesting permission from the additional agencies that follow. It could take a few months to receive.
6. Draft a letter to the United States Coast Guard, requesting permission for the wake zone/signage change. Include the letter of permission from the Florida Fish and Wildlife Conservation Commission, the city ordinance and location map.
7. The CG letter of approval is the permit necessary to proceed requesting permission from the additional agencies that follow.
8. Use United States Army Corps of Engineers Nationwide Permit Number 1 is authority that the request does not require pre-construction verification by the Corps. Once the proposed installation is approved by the US Coast Guard and the Army Corps Nationwide permit (1), no additional permit verification is required from them. It is optional to send the US Army Corps of Engineers a letter to inform them that you have obtained permission from the CG and FWC, with copies of approval letters, ordinance and map.

9. Send a **letter** requesting approval from the Department of Environmental Protection (DEP) Submerged Lands and Environmental Resources Program Office. They require the permit letters from the FFWCC; the US Coast Guard; and the "standard permission letter on file", as well as a copy of the current request/information letter of the US Army Corps of Engineers, BEFORE the DEP will give their approval.
10. Once you receive the approval letter from the DEP, you can now send a package, with the entire approval backup from each agency via **letter** to Pinellas County Public Works Coastal Management. Use the spreadsheet format to outline the changes being requested and the signage needed to be ordered for the installation.
11. After Pinellas County orders the signs/buoys and has a contractor install them, get the contractor to give us any changes to the longitude/latitude placement. We are responsible for getting back to the FWC with any changes.
12. Steps 10 and 11 can be avoided if we install the markers ourselves. The County will work with us to get signage and buoys if needed.

## The 2019 Florida Statutes

Title XXIV  
VESSELSChapter 327  
VESSEL SAFETY[View Entire Chapter](#)**327.46 Boating-restricted areas.—**

(1) Boating-restricted areas, including, but not limited to, restrictions of vessel speeds and vessel traffic, may be established on the waters of this state for any purpose necessary to protect the safety of the public if such restrictions are necessary based on boating accidents, visibility, hazardous currents or water levels, vessel traffic congestion, or other navigational hazards or to protect seagrasses on privately owned submerged lands.

(a) The commission may establish boating-restricted areas by rule pursuant to chapter 120.

(b) Municipalities and counties have the authority to establish the following boating-restricted areas by ordinance:

1. An ordinance establishing an idle speed, no wake boating-restricted area, if the area is:

a. Within 500 feet of any boat ramp, hoist, marine railway, or other launching or landing facility available for use by the general boating public on waterways more than 300 feet in width or within 300 feet of any boat ramp, hoist, marine railway, or other launching or landing facility available for use by the general boating public on waterways not exceeding 300 feet in width.

b. Within 500 feet of fuel pumps or dispensers at any marine fueling facility that sells motor fuel to the general boating public on waterways more than 300 feet in width or within 300 feet of the fuel pumps or dispensers at any licensed terminal facility that sells motor fuel to the general boating public on waterways not exceeding 300 feet in width.

c. Inside or within 300 feet of any lock structure.

2. An ordinance establishing a slow speed, minimum wake boating-restricted area if the area is:

a. Within 300 feet of any bridge fender system.

b. Within 300 feet of any bridge span presenting a vertical clearance of less than 25 feet or a horizontal clearance of less than 100 feet.

c. On a creek, stream, canal, or similar linear waterway if the waterway is less than 75 feet in width from shoreline to shoreline.

d. On a lake or pond of less than 10 acres in total surface area.

3. An ordinance establishing a vessel-exclusion zone if the area is:

a. Designated as a public bathing beach or swim area.

b. Within 300 feet of a dam, spillway, or flood control structure.

(c) Municipalities and counties have the authority to establish by ordinance the following other boating-restricted areas:

1. An ordinance establishing an idle speed, no wake boating-restricted area, if the area is within 300 feet of a confluence of water bodies presenting a blind corner, a bend in a narrow channel or fairway, or such other area if an intervening obstruction to visibility may obscure other vessels or other users of the waterway.

2. An ordinance establishing a slow speed, minimum wake, or numerical speed limit boating-restricted area if the area is:

a. Within 300 feet of a confluence of water bodies presenting a blind corner, a bend in a narrow channel or fairway, or such other area if an intervening obstruction to visibility may obscure other vessels or other users of the waterway.

b. Subject to unsafe levels of vessel traffic congestion.

c. Subject to hazardous water levels or currents, or containing other navigational hazards.

d. An area that accident reports, uniform boating citations, vessel traffic studies, or other creditable data demonstrate to present a significant risk of collision or a significant threat to boating safety.

3. An ordinance establishing a vessel-exclusion zone if the area is reserved exclusively:

a. As a canoe trail or otherwise limited to vessels under oars or under sail.

b. For a particular activity and user group separation must be imposed to protect the safety of those participating in such activity.

Any of the ordinances adopted pursuant to this paragraph shall not take effect until the commission has reviewed the ordinance and determined by substantial competent evidence that the ordinance is necessary to protect public safety pursuant to this paragraph. Any application for approval of an ordinance shall be reviewed and acted upon within 90 days after receipt of a completed application. Within 30 days after a municipality or county submits an application for approval to the commission, the commission shall advise the municipality or county as to what information, if any, is needed to deem the application complete. An application shall be considered complete upon receipt of all requested information and correction of any error or omission for which the applicant was timely notified or when the time for such notification has expired. The commission's action on the application shall be subject to review under chapter 120. The commission shall initiate rulemaking no later than January 1, 2010, to provide criteria and procedures for reviewing applications and procedures for providing for public notice and participation pursuant to this paragraph.

(d) Owners of private submerged lands that are adjacent to Outstanding Florida Waters, as defined in s. 403.061(27), or an aquatic preserve established under ss. 258.39-258.399 may request that the commission establish boating-restricted areas solely to protect any seagrass and contiguous seagrass habitat within their private property boundaries from seagrass scarring due to propeller dredging. Owners making a request pursuant to this paragraph must demonstrate to the commission clear ownership of the submerged lands. The commission shall adopt rules to implement this paragraph, including, but not limited to, establishing an application process and criteria for meeting the requirements of this paragraph. Each approved boating-restricted area shall be established by commission rule. For marking boating-restricted zones established pursuant to this paragraph, owners of privately submerged lands shall apply to the commission for a uniform waterway marker permit in accordance with ss. 327.40 and 327.41, and shall be responsible for marking the boating-restricted zone in accordance with the terms of the permit.

(e) As used in this section, the term "seagrass" has the same meaning as in s. 253.04.

(2) Each such boating-restricted area shall be developed in consultation and coordination with the governing body of the county or municipality in which the boating-restricted area is located and, when the boating-restricted area is to be on the navigable waters of the United States, with the United States Coast Guard and the United States Army Corps of Engineers.

(3) It is unlawful for any person to operate a vessel in a prohibited manner or to carry on any prohibited activity, as defined in this chapter, within a boating-restricted area which has been clearly marked by regulatory markers as authorized under this chapter.

(4) Restrictions in a boating-restricted area established pursuant to this section shall not apply in the case of an emergency or to a law enforcement, firefighting, or rescue vessel owned or operated by a governmental entity.

History.—s. 7, ch. 63-105; s. 1, ch. 65-361; ss. 25, 35, ch. 69-106; s. 23, ch. 78-95; s. 7, ch. 81-100; s. 27, ch. 99-245; s. 16, ch. 2000-362; s. 13, ch. 2009-86; s. 8, ch. 2017-163.

Note.—Former s. 371.522.

**CHAPTER 68D-21**  
**APPROVAL OF LOCAL ORDINANCES ESTABLISHING BOATING RESTRICTED AREAS**

68D-21.001	Requirements for Applications.
68D-21.002	Procedures for Reviewing Applications.
68D-21.003	Procedures for Providing for Public Notice and Participation.
68D-21.004	Criteria for Approval of Ordinances.

**68D-21.001 Requirements for Applications.**

(1) Approval by the Florida Fish and Wildlife Conservation Commission is not required for ordinances adopted pursuant to Section 327.46(1)(b), F.S. Regulatory markers necessary for implementing those ordinances must be permitted as required in Sections 327.40 and 327.41, F.S., and as provided in Chapter 68D-23, F.A.C.

(2) Any municipality or county application for approval of an ordinance establishing a boating-restricted area pursuant to Section 327.46(1)(c), F.S., must be submitted to: Florida Fish and Wildlife Conservation Commission, Division of Law Enforcement, Boating and Waterways Section.

(3) Each application must include:

(a) The name of the applicant municipality or county.

(b) The name, mailing address, telephone number, and any email address or facsimile number of the applicant's:

1. Primary contact person; and

2. Attorney or qualified representative.

(c) A certified copy of the adopted ordinance for which approval is sought. A county or municipality may submit a draft ordinance for review and approval. Approval, if granted, is conditioned upon the draft ordinance being adopted without amendment and does not become effective until a certified copy of the ordinance as adopted is received by the Boating and Waterways Section. If the draft ordinance is amended, approval of the draft ordinance will be rescinded and the ordinance as adopted will be reviewed.

(d) A statement identifying the provision within Section 327.46(1)(c), F.S., authorizing regulation of vessel speed or operation by the ordinance.

(e) One or more scaled drawings no larger than 8 1/2 inches by 11 inches, reproducible in black and white on standard office photocopying equipment which clearly show the following:

1. The jurisdictional boundaries of the municipality or county enacting the ordinance and, for county ordinances, the jurisdictional boundaries of any municipality in which a boating-restricted area is located.

2. The exact boundaries of each boating-restricted area established by the ordinance and the restrictions on vessel operation imposed within each boating-restricted area.

3. Any other known boating-restricted area (federal, state, county, other municipality, etc.) located within 2,500 feet of any boating-restricted area established by the ordinance.

4. The location of any of the following within a proposed boating-restricted area or used as a basis for establishing a boating restricted area, identified with a label or legend as to whether or not it is available for use by the general public:

a. Any boat ramp, hoist, marine railway, or other launching or landing facility.

b. Any fuel pump or dispenser at any marine fueling facility or licensed terminal facility.

c. Any lock structure.

d. Any designated public bathing beach or swim area.

5. The location of any of the following within a proposed boating-restricted area or used as a basis for establishing a boating restricted area:

a. Any bridge, including any bridge fender system, if present.

b. Any dam, spillway, or flood control structure.

c. Any confluence of water bodies presenting a blind corner.

d. Any bend or other intervening obstruction to visibility that may obscure other vessels or other users of the waterway in a narrow channel, fairway, or other similar area within the meaning of Inland Navigation Rule 9 (33 U.S.C. § 2009) as adopted by Section 327.33, F.S.

e. Any specific hazards to navigation (with a label or legend describing the hazard).

6. If relied upon as a basis for establishing the boating-restricted area, the location and description of any of the following:

- a. Any specific area subject to unsafe levels of vessel traffic congestion.
- b. Any specific area subject to hazardous water levels or currents.
- c. Any reported boating accident.
- d. Any issuance of a Uniform Boating Citation.

7. The shoreline-to-shoreline width of the body of water upon which the boating restricted area is to be established and, if the water body is a lake or pond, the total surface area expressed in acres.

(f) Documentation that the ordinance was developed, prior to presenting language for adoption, in consultation and coordination with:

1. The governing body of every other county or municipality sharing jurisdiction over the area in which the boating-restricted area is located.

2. The United States Coast Guard if the boating-restricted area is to be established on navigable waters of the United States as defined in 33 C.F.R. § 2.36(a) (2009), which is adopted by reference and is available at <http://www.gpoaccess.gov/cfr/index.html>.

3. The United States Army Corps of Engineers if the boating-restricted area is to be established on navigable waters of the United States as defined in 33 C.F.R. § 329.4 (2009), which is adopted by reference and is available at <http://www.gpoaccess.gov/cfr/index.html>.

(g) A summary of the facts and circumstances the applicant contends justifies the establishment of the restriction on speed or operation and a list of the evidence in support of that contention the applicant desires for the agency to review.

(h) An appendix containing all evidence listed in paragraph (g) above, except that the appendix need not include the following:

1. Copies of Boating Accident Reports or Boating Accident Investigation Reports if those reports are identified by law enforcement agency case number and provided in a list. If the Boating and Waterways Section does not have a copy on file of one or more such reports, it will request that the applicant supplement the application appendix with copies of those reports.

2. Copies of Florida Uniform Boating Citations if identified by citation number in a list. If one or more citations are not already entered into the ArrestNet Database maintained by the Field Services Section, the Boating and Waterways Section will request the applicant to supplement the application appendix with copies of those citations.

(i) Proof that the applicant has at its own cost published, as provided by Sections 50.011-.031, F.S., once a week for 2 consecutive weeks, prior notice of the public hearing on the ordinance in a newspaper of general circulation in the area(s) affected by the ordinance.

(j) The signature of the applicant's attorney or qualified representative.

(k) The date the application is submitted.

(4) Complete applications may be submitted:

(a) By mail or in person to the Fish and Wildlife Conservation Commission, Boating and Waterways Section, 620 South Meridian Street, Tallahassee, FL 32399-1600; or

(b) As a Portable Document Format (.pdf) file attached to an email addressed to [waterway.management@myfwc.com](mailto:waterway.management@myfwc.com).

(5) The Boating and Waterways Section will not process partial or incomplete applications.

*Rulemaking Authority 327.04, 327.46 FS. Law Implemented 327.46 FS. History—New 10-6-10.*

#### **68D-21.002 Procedures for Reviewing Applications.**

(1) Upon receipt of all statements and other documents specified above, the Boating and Waterways Section will determine whether or not the application is complete.

(a) If the application is not substantially complete or has not been completed substantially correctly, the Boating and Waterways Section will within 30 days of receipt return it to the applicant with a statement of the items that are missing or that must be corrected.

(b) If the application is substantially complete and only minor additions or corrections are required, the Boating and Waterways Section will within 30 days following receipt notify the applicant of the apparent errors or omissions and request the required additional or corrected information. If the requested additional or corrected information is not received within 30 days, the Boating and Waterways Section will return the application to the applicant with a statement of the items that are missing or that must be corrected.

(2) Within 30 days following receipt of a completed application, the Boating and Waterways Section will provide notice of such receipt to the applicant by mail or by email using the same method by which the application was submitted and to the public as provided in Rule 68D-21.003, F.A.C.

(3) The Boating and Waterways Section will within 90 days following receipt of a completed application, review and act upon the application as follows:

(a) The Boating and Waterways Section will determine whether or not each boating-restricted area created in the ordinance is authorized under Section 327.46(1)(b) or (c), F.S. If any boating-restricted area created in the ordinance is not authorized pursuant to one of those paragraphs, the application will be denied. As provided in subsection 68D-21.001(1), F.A.C., approval is not required for ordinances in which every boating-restricted area established therein is authorized under Section 327.46(1)(b), F.S.

(b) The Boating and Waterways Section will determine whether or not each boating-restricted area established in the ordinance was developed prior to adoption of the ordinance:

1. For municipal ordinances, in consultation and coordination with the governing body of the county in which the boating-restricted area is located;

2. For county ordinances, in consultation and coordination with the governing body of each municipality in which a boating-restricted area is located unless all boating-restricted areas are located in unincorporated portions of the county;

3. For boating-restricted area on navigable waters of the United States, in consultation and coordination with the United States Coast Guard and the United States Army Corps of Engineers.

If the required consultation and coordination has not taken place, the application will be denied. This paragraph shall not be construed to require an applicant to wait indefinitely for a response to a request for consultation and coordination. If a municipality or county has made such a request for consultation and coordination in writing and has not received a response within 30 days, the Boating and Waterways Section will, if requested, attempt to facilitate such consultation and coordination. If a response is still not forthcoming, the Boating and Waterways Section will conclude that the municipality, county, or federal agency to whom the request was addressed has no objection to the proposed ordinance and no further consultation or coordination will be required.

(c) The Boating and Waterways Section will determine whether or not the application and appendix establish a *prima facie* showing that the ordinance is necessary to protect public safety by evaluating if at least one of the criteria in Rule 68D-21.004, F.A.C., has been met.

(d) If there is a *prima facie* showing that the ordinance is necessary to protect public safety and that at least one of the criteria in Rule 68D-21.004, F.A.C., has been met, the Boating and Waterways Section will:

1. Review all written public comments received within 21 days following the notice provided to the public as required in Rule 68D-21.003, F.A.C., and all testimony, evidence, and exhibits presented at a public hearing if one was requested;

2. Review all comments provided by the United States Coast Guard and the United States Army Corps of Engineers received prior to the determination.

3. Conduct a public hearing within the applicant's jurisdiction if a written request for such a hearing is received within 21 days following the notice provided to the public as required in Rule 68D-21.003, F.A.C.

(e) Based on the totality of the information received, the Boating and Waterways Section will determine whether or not there is substantial competent evidence that the ordinance is necessary to protect public safety.

1. An ordinance will be considered necessary to protect public safety only if it is required for the purposes of protecting human life and limb, vessel traffic safety, and, as defined in Rule 68D-23.103, F.A.C., maritime property.

2. No ordinance establishing a boating restricted area will be approved for the purpose of noise abatement or for the protection of shoreline, shore-based structures, or upland property from vessel wake or shoreline wash. As provided in Section 327.33(2), F.S., "vessel wake and shoreline wash resulting from the reasonable and prudent operation of a vessel shall, absent negligence, not constitute damage or endangerment to property." The wake resulting from the reasonable and prudent operation of a vessel is a force which should be anticipated by the owners of property adjacent to the navigable waters of this state.

(4) The Boating and Waterways Section will act to approve or deny the application within the time limits specified in Section 327.46(1)(c), F.S. Upon approval or denial of the application, the Boating and Waterways Section will provide notice of the approval or denial as provided in Rule 68D-21.003, F.A.C. If no request for review is timely received, this notice will constitute final agency action.

(5) The Florida Fish and Wildlife Conservation Commission, sitting as agency head at its next available regularly scheduled meeting, will review any approval or denial determination made by the Boating and Waterways Section upon timely receipt of a

request for review. Any substantially affected person may request review of the approval or denial; the request must be received by the Boating and Waterway Section within 21 days following the notice provided to the public as required in Rule 68D-21.003, F.A.C.

*Rulemaking Authority 327.04, 327.46 FS. Law Implemented 327.46 FS. History—New 10-6-10.*

#### **68D-21.003 Procedures for Providing for Public Notice and Participation.**

(1) Public Notice. The Boating and Waterways Section will provide notice of complete applications received, public meetings or hearing concerning applications, and denial or approval of applications; on the Boating and Waterways Section's web page at [http://www.myfwc.com/RECREATION/boat\\_index.htm](http://www.myfwc.com/RECREATION/boat_index.htm) and to all parties listed in the "Boating and Waterways Section's Public Distribution List – Ordinances" in which any member of the public may join by a request to the mailing or email address found below in paragraph 68D-21.003(2)(a), F.A.C.

##### **(2) Public Participation.**

(a) Members of the public may provide written comments, recommendations, requests, inquiries, or other correspondence to the Boating and Waterways Section at 620 South Meridian Street, Tallahassee, FL 32399-1600; or by email at [waterway.management@myfwc.com](mailto:waterway.management@myfwc.com). Any attachments to emails must be in one or more of the following file formats, as appropriate: Microsoft Word Document (.doc or .docx); Rich Text File (.rtf); Portable Document Format (.pdf); Joint Photographic Experts Group format (.jpg or .jpeg); or Tagged Image File Format (.tif or .tiff).

(b) If a public hearing is requested under subparagraph 68D-21.002(3)(d)3, F.A.C., or review by the agency head is requested under subsection 68D-21.002(5), F.A.C., members of the public may:

1. Testify at the hearing or Commission meeting;
2. Submit relevant and material exhibits to the record of the proceeding.

*Rulemaking Authority 327.04, 327.46 FS. Law Implemented 327.46 FS. History—New 10-6-10.*

#### **68D-21.004 Criteria for Approval of Ordinances.**

(1) Any ordinance submitted pursuant to Section 327.46(1)(c), F.S., and in compliance with Chapter 68D-21, F.A.C., is subject to review and approval by the Commission.

(2) An ordinance establishing either an "idle speed, no wake" or a "slow speed, minimum wake" boating restricted area will be approved for areas not more than 300 feet from a confluence (intersection) of water bodies presenting a blind corner, a bend in a narrow channel or fairway, or such other area if an intervening obstruction to visibility may obscure other vessels or other users of the waterway.

(a) A blind corner is presented where an intervening obstruction to visibility prevents the operator of a vessel on one of the water bodies from seeing a vessel on the other water body at a distance of 300 feet or less from the confluence.

(b) A bend or other intervening obstruction to visibility in a narrow channel, fairway, or other similar water body within the meaning of Inland Navigation Rule 9 (33 U.S.C. § 2009) as adopted by Section 327.33, F.S., is presented where a decision sight distance of less than 300 feet exists and prevents the operator of a vessel from seeing other vessels or other users of the waterway.

(3) An ordinance establishing a "slow speed, minimum wake" boating-restricted area or numerical speed limit boating-restricted area regulated at 25 or 30 miles per hour will be approved for areas:

##### **(a) Subject to hazardous water levels or currents if:**

1. The boating-restricted area established in the ordinance is active and enforceable only when the water levels are at or above flood stage on a river gauge operated or reported by the National Weather Service's River Forecast Center (<http://www.srh.noaa.gov/serfc/>) or at the equivalent level on a river gauge operated or reported by the United States Geological Survey's National Water Information System (<http://waterdata.usgs.gov/fl/nwis/rt>) and the specific gauge and flood stage water level is specified in the ordinance.

2. The United States Coast Pilot (<http://www.nauticalcharts.noaa.gov/nsd/cpdownload.htm>) identifies the area as being subject to hazardous tides or currents.

3. A navigation chart published by the National Oceanic and Atmospheric Administration's National Ocean Service (<http://www.nauticalcharts.noaa.gov/>) identifies the area as being subject to hazardous tides or currents.

4. Creditable data demonstrate that the area is subject to water levels or currents that endanger vessels operating in the area or the occupants of such vessels.



(b) Containing a documented navigational hazard of a nature that vessel operation in its vicinity at speed in excess of slow speed, minimum wake endangers the vessel or its occupants. Navigational hazards are presumed to exist within the marked boundaries of mooring fields as permitted by Section 327.40, F.S.

(c) Subject to unsafe levels of vessel traffic congestion, seasonal or year-round, such that:

1. The traffic density including concentration of fishing vessels or any other vessels would require that vessels slacken speed under Inland Navigation Rule 6(a)(ii) (33 U.S.C. § 2006) as adopted by Section 327.33, F.S.; or
2. It presents a significant risk of collision or a significant threat to boating safety.
3. Unsafe levels of vessel traffic congestion, a significant risk of collision, or a significant threat to boating safety may be demonstrated by:

a. Accident reports – The following reports of boating accidents are acceptable if prepared contemporaneously with the boating accident being reported and if vessel traffic congestion or the speed or wake of a vessel involved in the accident caused or contributed to the accident:

i. Florida Boating Accident Investigation Report, form FWCDLE 146, or Florida Boating Accident Self Report, form FWCDLE 146C, supplied by the Commission as provided in Section 327.302, F.S.; United States Coast Guard Recreational Boating Accident Report, form CG-3865, as provided in 33 C.F.R. §§ 173.55, 173.57; United States Coast Guard Report of Marine Casualty, Injury or Death, form CG-2692, as provided in 46 C.F.R. § 4.05-10. The current versions of these forms are adopted by reference in subsection (5); prior editions of these forms are also acceptable.

ii. A law enforcement agency's official offense or incident report prepared and signed by an officer authorized under Section 327.70, F.S., to enforce the provisions of Chapters 327 and 328, F.S.

iii. Medical records, including EMS and medical examiner reports, if they document death or injuries as a result of a boating accident and specify the nature and location of the boating accident;

b. Uniform boating citations issued on citation forms supplied by the Commission as provided in Section 327.74, F.S., if the violation alleged in the citation is related to the cited vessel's speed or wake.

c. A vessel traffic study if the conclusions of the study are, as determined by the Boating and Waterways Section, based upon sufficient facts or data, are the product of reliable principles and methods, and if the study has applied the principles and methods reliably to the facts or data considered. In assessing the creditability of a vessel traffic study, the following factors (as applicable) shall be among those considered:

i. Whether the study's methodology can be or has been tested (i.e., whether the study's methodology can be challenged in some objective sense, or whether it is instead simply a subjective, conclusory approach that cannot reasonably be assessed for reliability);

ii. Whether the study's methodology has been subject to peer review and publication;

iii. The known or potential rate of error of the study's methodology;

iv. The existence and maintenance of standards and controls; and

v. Whether the methodology has been generally accepted in the scientific community.

d. Other creditable data. For the purposes of this subparagraph, "other creditable data" means facts or data that are of a type reasonably relied upon by experts in the fields of boating safety, maritime safety, navigation safety, ports and waterways safety assessments, or vessel traffic management, as contemplated in Section 90.704, F.S.

(d) That could have been established as an idle speed, no wake boating-restricted area under Section 327.46(1)(b)1., F.S., provided the applicant demonstrates by competent substantial evidence how the specific regulation will adequately solve public safety concerns in the area.

(4) An ordinance establishing a vessel exclusion zone (an area from which all vessels or certain classes of vessels are excluded) will be approved if the area is reserved exclusively:

1. As a canoe trail or otherwise limits vessel propulsion if the applicant demonstrates by competent substantial evidence how the restriction is necessary to protect public safety pursuant to Section 327.46, F.S., and if:

a. One of the following restrictions, as defined in Rule 68D-23.103, F.A.C., is imposed: "No Motorized Vessels" or "No Motorboats" or "Motorboats Prohibited"; "No Power-driven Vessels"; "No Internal Combustion Motors"; "Manually Propelled Vessels Only" and

b. Imposition of the restriction will not unreasonably or unnecessarily endanger navigation or interfere with the use of a navigation channel that is lawfully marked with lateral aids to navigation.

2. For a particular specified activity (e.g.: sailing instruction, marine research, water skiing, personal watercraft use, sailboard use, etc.) if the applicant demonstrates by competent substantial evidence how certain classes of vessels (including all vessels if appropriate under the prevailing circumstances) endanger or are likely to endanger those participating in the specified activity and that the specified classes of vessels must be excluded from the area in order to adequately protect the safety of those participating in the specified activity.

(5) The following forms are adopted and incorporated by reference:

(a) Florida Boating Accident Investigation Report, form FWCDLE 146 (07/2010), and Florida Boating Accident Self Report, form FWCDLE 146C (07/2010), supplied by the Commission as provided in Section 327.302, F.S. These forms may be obtained from the Boating and Waterways Section, 620 South Meridian Street, Tallahassee, FL 32399-1600.

(b) United States Coast Guard Recreational Boating Accident Report, form CG-3865 (Rev. 07/08), as provided in 33 C.F.R. §§ 173.55, 173.57. This form may be obtained from Commandant (CG-5422), U.S. Coast Guard Headquarters, 2100 Second St. SW, Stop 7581, Washington, DC 20593-7581, or downloaded at <http://www.uscgboating.org/assets/1/Publications/cg3865barform2008.pdf>.

(c) United States Coast Guard Report of Marine Casualty, Injury or Death, form CG-2692 (Rev. 06/04), as provided in 46 C.F.R. § 4.05-10. This form may be obtained from the Coast Guard Sector Office, Coast Guard Marine Inspection Office or Coast Guard Group Office nearest the scene of the marine casualty, or from Commander, USCG Seventh District, Brickell Plaza Federal Building, 909 S.E. 1st Avenue, Miami, FL 33131-3050, or downloaded at [http://www.uscg.mil/forms/CG/CG\\_2692.pdf](http://www.uscg.mil/forms/CG/CG_2692.pdf).

*Rulemaking Authority 327.04, 327.302, 327.46 FS. Law Implemented 327.302, 327.46 FS. History--New 10-6-10.*

**CHAPTER 68D-23**  
**UNIFORM WATERWAY MARKERS IN FLORIDA WATERS**

68D-23.101	Intent
68D-23.102	Scope
68D-23.103	Definitions
68D-23.104	Permits Required; Application for Permits
68D-23.105	Criteria for Approval of Markers
68D-23.106	Marker Replacement Requirements
68D-23.107	Federal System Adopted
68D-23.108	Specifications for Markers
68D-23.109	Additional Specifications for Information, Danger, and Regulatory Markers
68D-23.110	Inspections and Certification
68D-23.111	Enforcement
68D-23.112	Exemptions

**68D-23.101 Intent.**

(1) This chapter is consistent with and conforms to 33 C.F.R. part 62 – The navigable waters of the United States and non-navigable State waters (which together include all waters of this state), are marked to assist navigation using the United States Aids to Navigation System, a system consistent with the International Association of Lighthouse Authorities (IALA) Maritime Buoyage System. The IALA Maritime Buoyage System is followed by most of the world's maritime nations and will improve maritime safety by encouraging conformity with buoyage systems used worldwide.

(2) It is the intent of this chapter:

(a) To provide for uniformity in design, construction and coloring of markers so that all vessel operators may readily recognize, identify and distinguish between authorized markers and unlawfully placed markers;

(b) To provide a means by which the Fish and Wildlife Conservation Commission and its officers and all other law enforcement officers charged with the enforcement of this chapter may determine with reasonable certainty which boating restricted areas are lawfully established and marked;

(c) To insure that regulatory markers noticing boating restricted areas created pursuant to Sections 327.46 and 379.2431, F.S., are authorized only for the purposes of protecting human life and limb, vessel traffic safety and maritime property, and manatees.

(3) It is further the intent of this chapter that no boating restricted area be established, continued in effect, or enforced for the purpose of noise abatement or for the protection of shoreline, shore-based structures, or upland property from vessel wake or shoreline wash. As provided in Section 327.33(2), F.S., "vessel wake and shoreline wash resulting from the reasonable and prudent operation of a vessel shall, absent negligence, not constitute damage or endangerment to property." The wake resulting from the reasonable and prudent operation of a vessel is a force which should be anticipated by the owners of property adjacent to the navigable waters of this state.

(4) The Fish and Wildlife Conservation Commission will not issue any permit authorizing the placement of regulatory markers implementing municipal or county ordinances that:

(a) Are in violation of Section 327.60, F.S.;

(b) Establish boating-restricted areas pursuant to Section 327.46(1)(c), F.S., until such ordinances have been reviewed and approved by the Boating and Waterways Section in accordance with Chapter 68D-21, F.A.C.;

(c) Regulate vessel speed or operation for manatee protection purposes pursuant to Section 379.2431(2)(p), F.S., until such ordinances have been reviewed and approved by the commission, coordinated through the Imperiled Species Management Section, and provided that such ordinances do not apply within the marked navigation channel of the Florida Intracoastal Waterway nor to the waters within 100 feet of said channel;

(5) Where conflicting speed or operational restrictions are established by law or pursuant to law, the more restrictive shall be posted and shall apply.

(6) Regulatory markers placed and maintained pursuant to a permit issued as provided herein shall be prima facie evidence of the boundaries of boating-restricted areas and the speed or operational restrictions imposed therein.

*Rulemaking Authority 327.04, 327.40, 327.41 FS. Law Implemented 327.40, 327.41, 379.2431 FS. History—New 12-23-01, Amended 10-5-06, 10-6-*

**68D-23.102 Scope.**

The provisions of this chapter prescribe the procedures by which the Division of Law Enforcement's Boating and Waterways Section permits and regulates the placement of markers in, on, and over the waters of this state and the shores thereof. This chapter also provides for the design, characteristics and coloring, construction, placement, and maintenance of all markers placed in, on, and over the waters of this state and the shores thereof by adopting by reference the United States Aids to Navigation System, Part 62 of Title 33 of the Code of Federal Regulations, and the United States Coast Guard's manuals pertaining to aids to navigation and other waterway markers.

*Rulemaking Authority 327.40, 327.41 FS. Law Implemented 327.40, 327.41 FS. History—New 12-23-01, Amended 10-6-10.*

**68D-23.103 Definitions.**

For purposes of this chapter and Chapters 68C-22 and 68D-24, F.A.C., the following definitions shall apply:

**(1) Types of markers:**

(a) "Aid to navigation" means any device external to a vessel intended to assist a navigator to determine position or safe course, or to warn of dangers or obstructions to navigation.

(b) "Information marker" means a device external to a vessel intended to provide the mariner with information concerning matters other than dangers or obstructions to navigation, or regulatory matters.

(c) "Danger marker" means a device external to the vessel intended to provide the mariner with information concerning dangers or obstructions to navigation such as shoals, shallows, rocks, submerged pipes or cables, dams, or low clearance obstructions above the water such as power lines, trestles, or bridges.

(d) "Regulatory marker" means a device used to alert the mariner to various regulatory matters such as horsepower, speed, wake, or entry restrictions.

(e) "Special mark" means a marker not primarily intended to assist safe navigation, but to indicate special areas or features referred to in charts or other nautical publications. They may be used, for example, to mark anchorages, mooring fields, park boundaries, cable or pipeline areas, marine events, etc. Special marks are colored solid yellow.

(f) "Mooring buoy" means a device that is permanently secured to the bottom of a body of water and to which a vessel may be secured when not underway.

(g) "Buoy" means any device designed to float which is anchored in the waters of the state and which is used to convey a message, carry a sign, or support a mooring pennant.

(h) "Sign" means an object which displays a message and which is attached to another object such as a piling, buoy, structure, or the land itself.

(i) "Symbol" means the orange geometric shape displayed on a danger, information, or regulatory marker. The meanings associated with the orange geometric shapes are as follows:

1. A vertical open-faced diamond signifies danger;

2. A vertical diamond shape having a cross centered within indicates that all vessels or certain classes of vessels are excluded from the marked area;

3. A circular shape indicates that certain operating restrictions are in effect within the marked area; and

4. A square or rectangular shape will contain directions or instructions lettered within the shape.

(j) "Display area" means the area on a danger, information or regulatory marker within which the symbol is displayed.

**(2) General definitions:**

(a) "Boating-restricted area" means an area of the waters of the state within which the operation of vessels is subject to specified restrictions or from which vessels are excluded.

(b) "Shore" means that area of land immediately adjacent or contiguous to the waters of the state such that a sign or marker erected thereon is readily visible to the operator of a vessel who might reasonably believe that the sign or marker displays navigational, regulatory or other information relevant to the operation of the vessel.

(c) "Florida Intracoastal Waterway" means:

1. All waters within the right-of-way of the Atlantic Intracoastal Waterway, the Georgia state line north of Fernandina to Miami; the Port Canaveral lock and canal to the Atlantic Intracoastal Waterway; the Atlantic Intracoastal Waterway, Miami to Key West;

the Okeechobee Waterway Route 1 across Lake Okeechobee and Route 2 along the southern perimeter of the lake, from Port Mayaca to Clewiston; the Gulf Intracoastal Waterway, Anclote to Fort Myers; the Gulf Intracoastal Waterway, Carrabelle to Tampa Bay; the Gulf Intracoastal Waterway, Carrabelle to Anclote open bay section (using the Gulf of Mexico); and the Gulf Intracoastal Waterway, Carrabelle to the Alabama state line west of Pensacola; and

2. All waters from shoreline to shoreline within the Okeechobee Waterway, Stuart to Fort Myers, not including Route 1 across Lake Okeechobee and Route 2 along the southern perimeter of the lake, from Port Mayaca to Clewiston; the St. Johns River, Jacksonville to Sanford; and, the Apalachicola, Chattahoochee, and Flint Rivers in Florida.

(d) "Uniform State Waterway Marking System" means the system of aids to navigation, information markers, regulatory markers, and mooring buoys, as specified in Part 66 of Title 33 of the Code of Federal Regulations.

(e) "United States Aids to Navigation System" means the system of aids to navigation, information markers, regulatory markers, and mooring buoys, as specified in Part 62 of Title 33 of the Code of Federal Regulations.

(f) "Private Aid to Navigation" means an aid to navigation the establishment of which is authorized by a permit issued by the United States Coast Guard pursuant to Part 66 of Title 33 of the Code of Federal Regulations.

(g) "Maritime property" means vessels and their engines, tackle, gear, equipment, appurtenances, furnishings, cargoes, stores, personal property then on board belonging to the vessels' occupants, and such other similar property as is consistent with the general maritime law of the United States. This definition does not include littoral or riparian property, the shores thereof, seawalls, docks, wharfs, or other property intentionally and permanently attached to the shore.

(h) "Inland lake" means a naturally occurring or man-made fresh water lake or pond. The term does not include reservoirs, impoundments, or any portion of the Florida Intracoastal Waterway.

(i) "Associated canal" means a man-made canal that is directly attached to an inland lake and that does not connect to other waters or that connects only to another inland lake. The term does not include any portion of a state or federally funded navigation project or any portion of the Florida Intracoastal Waterway.

(j) "In writing" means any written or printed form of communication and includes electronic mail, files transferred as attachments to electronic mail, and telefacsimiles.

(3) When used on markers, the terms:

(a) "Idle Speed No Wake" and "Idle Speed" may be used interchangeably and mean that a vessel must proceed at a speed no greater than that which will maintain steerageway and headway. At no time is any vessel required to proceed so slowly that the operator is unable to maintain control over the vessel or any other vessel or object that it has under tow.

(b) "Slow Speed" and "Slow Speed Minimum Wake" may be used interchangeably and mean that a vessel must be fully off plane and completely settled into the water. The vessel must then proceed at a speed which is reasonable and prudent under the prevailing circumstances so as to avoid the creation of an excessive wake or other hazardous condition which endangers or is likely to endanger other vessels or other persons using the waterway. At no time is any vessel required to proceed so slowly that the operator is unable to maintain control over the vessel or any other vessel or object that it has under tow. A vessel that is:

1. Operating on plane is not proceeding at this speed;

2. In the process of coming off plane and settling into the water or coming up onto plane is not proceeding at this speed;

3. Operating at a speed that creates a wake which unreasonably or unnecessarily endangers other vessels or other persons using the waterway, or is likely to do so, is not proceeding at this speed;

4. Completely off plane and which has fully settled into the water and is proceeding at a reasonable and prudent speed with little or no wake is proceeding at this speed.

"Slow Speed" and "Slow Speed Minimum Wake" are the preferred terms. "Slow Down Minimum Wake" markers may continue to be used for restricted areas authorized prior to January 1, 2001, except when such a restricted area is contiguous to an Idle Speed No Wake boating restricted area.

(c) "Caution zone" means an area presenting a significant risk of navigational hazard, an area frequently inhabited by manatees on a somewhat regular basis, or other area similarly requiring that vessels be operated with particular alertness and caution so as to avoid endangering life, limb, vessel traffic safety or maritime property, or manatees.

(d) "No Power-driven Vessels" – All vessels equipped with any mechanical means of propulsion must turn off the mechanical means of propulsion and, if possible to do so, tilt or raise the mechanical means of propulsion out of the water. The use of any motor, including an electric motor, is prohibited.

(e) "No Internal Combustion Motors" or "No Motor Zone" – All vessels equipped with internal combustion motors (e.g.:

gasoline or diesel motors) for propulsion must turn off the internal combustion motor and, if possible to do so, tilt or raise the internal combustion motor out of the water. The use of electric motors is not prohibited.

(f) "Vessel-exclusion zone" means an area from which all vessels or certain classes of vessels are excluded. The following list includes the most common examples of vessel-exclusion zones. Whenever the following messages are displayed on vessel-exclusion zone markers, they have the meaning provided. Other messages on vessel-exclusion zone markers are permissible, so long as the markers display language that accurately describes the vessels or classes of vessels that are excluded from the area. All vessel-exclusion zones must be marked with the crossed-diamond symbol as specified in subparagraph (1)(i)2., above.

1. "No Vessels" or "Swim Area" – All vessels of any type are prohibited from entering the marked area.

2. "No Motorized Vessels" or "No Motorboats" or "Motorboats Prohibited" – All vessels equipped with any mechanical means of propulsion are prohibited from entering the marked area, even if the mechanical means of propulsion is not in use.

3. "Manually Propelled Vessels Only" – All vessels other than those propelled by oars, paddles, or poles are prohibited from entering the marked area. Vessels equipped with sails or a mechanical means of propulsion may enter the marked area only if the sails or mechanical means of propulsion is not in use and, if possible to do so, the mechanical means of propulsion is tilted or raised out of the water.

4. "No Entry Area" – All vessels and all persons, either in vessels or swimming, diving, or wading, are prohibited from entering the marked area.

(g) "Miles per hour" and "MPH" mean speed made good over the bottom measured in statute miles. A specific number will be posted in conjunction with "miles per hour" or "MPH" and is the maximum speed at which a vessel may lawfully be operated within the marked area. Although it is the intention of the Commission to allow those vessels capable of attaining a planing configuration at posted numerical speed limit to do so, this posted speed limit shall not be construed as permitting the reckless or careless operation of a vessel, in violation of Section 327.33, F.S., or authorizing any vessel to travel at an unsafe speed, in violation of navigation rule 6 as adopted pursuant to Section 327.33, F.S., by reason of:

1. Having an elevated bow which restricts visibility, or

2. Producing an excessive wake or other hazardous condition which endangers or is likely to endanger other vessels, other persons using the waterway, or natural resources of the state.

(h) "Wake," only when used in conjunction with a numerical size limit, means all changes in the vertical height of the water's surface caused by the passage of a vessel including, but not limited to, a vessel's bow wave, stern wake, and propeller wash, measured from the ambient tide level to the crest of the vessel's wake at a distance of not less than 25 feet from the vessel.

(i) "Holiday" means:

1. New Year's Day.

2. Birthday of Martin Luther King, Jr., the third Monday in January.

3. Memorial Day.

4. Independence Day, the Fourth of July.

5. Labor Day.

6. Columbus Day.

7. Veterans' Day, November 11.

8. Thanksgiving Day.

9. Friday after Thanksgiving.

10. Christmas Day.

If any of these holidays falls on Saturday, the preceding Friday shall be observed as a holiday. If any of these holidays falls on Sunday, the following Monday shall be observed as a holiday.

(4) The Boating and Waterways Section will authorize the use of other terminology on regulatory markers if the message is clear, unambiguous, and accurately describes a lawfully imposed restriction.

*Rulemaking Authority 327.04, 327.40, 327.41, 327.46, 379.2431 FS. Law Implemented 327.40, 327.41, 327.46, 379.2431 FS. History—New 12-23-01. Amended 10-5-06, 10-6-10.*

#### **68D-23.104 Permits Required; Application for Permits.**

(1) Except as provided in subsection 68D-23.112(4), F.A.C., no person, municipality, county or other governmental entity shall place, cause to be placed, or maintain in place any marker in, on or over the waters of the state or the shores thereof without a permit from the Boating and Waterways Section.

(2) Any person, municipality, county, or other governmental entity desiring to place a marker shall apply to the Boating and Waterways Section on the Florida Uniform Waterway Marker Application form, FWCDLE 153 (07/2010), which is adopted and incorporated herein by reference. Application forms may be obtained by submitting a request to: Florida Fish and Wildlife Conservation Commission, Division of Law Enforcement, Boating and Waterways Section, 620 South Meridian Street, Tallahassee, Florida 32399-1600 or by downloading the application from the Commission website at: [http://www.myfwc.com/RECREATION/boat\\_waterways\\_index.htm](http://www.myfwc.com/RECREATION/boat_waterways_index.htm). Each application must include:

(a) One or more scale drawings no larger than 8 1/2 inches by 11 inches, reproducible on standard office photocopying equipment, showing the intended locations for the placement of all proposed markers with each proposed marker labeled to correspond to the list required in paragraph (b) below.

1. If the application is for regulatory markers, the drawing must also depict the exact boundaries of the area within which regulation or restriction is to be in effect.

2. If the application is for the following markers the drawing must also depict:

a. The location of the danger, hazard to navigation, or obstruction if the application is for a danger marker, isolated danger mark, or inland waters obstruction mark.

b. Water depths within and adjacent to the area being marked if the application is for lateral marks, preferred channel marks, or safe water marks.

c. The location and boundaries of the anchorage, mooring field, park, cable or pipeline area, marine event, or other special area or feature for which the markers are proposed if the application is for special marks.

d. Any information needed to identify and support the proposed information marker.

3. If the application is for mooring buoys of any type, the drawing must also depict the watch circle and water depth for each mooring and any channels or fairways within 500 feet of the proposed mooring buoys.

(b) A list of the markers proposed, labeled to correspond to the drawing(s) required above.

(c) A statement of the specifications for the markers proposed, including:

1. A description giving the type, size, shape, color, material, height above mean high water for each marker sign or buoy, and the number, letter or message displayed thereon;

2. A description of the type, size, and material used for:

a. Any structure which will support a marker sign;

b. Any anchor, anchoring system, chain, tether, rode, or other ground tackle which will secure a marker buoy, including a mooring buoy, to the bottom;

3. A statement of the color, characteristic, height above mean high water, intensity, and nominal range of any light which will be placed on the markers;

4. A statement of the type signal (whistle, horn, bell, etc.) and characteristic for any audible signal.

5. The latitude and longitude of the location where each marker will be placed, expressed in degrees and decimal minutes and referenced to the WGS-84 datum.

(d) A statement of the purpose for placing the proposed markers.

1. If the application is for regulatory markers, this statement must include the purpose for regulating or restricting vessel speed or operation in sufficient detail to permit the Boating and Waterways Section to ascertain whether there are a proper number of markers proposed to be installed in proper locations so that the boating public is given adequate notice of the regulation or restriction on vessel speed or operation.

2. If the application is for a danger marker, isolated danger mark, or inland obstruction mark, this statement must include a description of the danger, hazard to navigation, or obstruction in sufficient detail to permit the Boating and Waterways Section to ascertain whether there are a proper number of markers proposed to be installed in proper locations so that the boating public is given adequate notice of the danger, hazard to navigation, or obstruction.

3. If the application is for lateral marks, preferred channel marks, or safe water marks, this statement must include a description of the channel, fairway, or other area of safe water in sufficient detail to permit the Boating and Waterways Section to ascertain

whether there are a proper number of markers proposed to be installed in proper locations so that the boating public is given adequate notice of channel, preferred channel, fairway, or safe water area.

4. If the application is for special marks, this statement must include a description of the anchorage, mooring field, park, cable or pipeline area, marine event, or other special area or feature for which the markers are proposed in sufficient detail to permit the Boating and Waterways Section to ascertain whether there are a proper number of markers proposed to be installed in proper locations so that the boating public is given adequate notice of the area's or feature's nature, location, and boundaries.

5. If the application is for mooring buoys, this statement must include the following:

- a. A statement of the type, maximum overall length, and maximum draft of vessels that will be allowed to moor at each buoy.
- b. An estimate of the average daily weekday traffic and average daily weekend and holiday traffic that will be arriving or departing the proposed moorings.
- c. A description of any navigation channels or fairways within 500 feet of the proposed mooring buoys and a description of nature and volume of vessel traffic within such channels or fairways.
- d. A description of any upland amenities that will be provided to vessels moored at the proposed mooring buoys.
- e. A list of any rules, regulations, requirements, or prohibitions that will be imposed on vessels moored at the proposed mooring buoys.

f. A statement of whether the area in which the mooring buoys are proposed to be located has been designated by the United States Coast Guard as a special anchorage area (i.e., vessels moored there will not need to display anchor lights) or whether the applicant intends to seek such a designation.

g. A statement of whether the mooring buoys will be managed together as a mooring field and, if so, whether the applicant intends to seek the adoption of an ordinance prohibiting anchoring within the marked boundaries of the mooring field. This information must be provided in sufficient detail to permit the Boating and Waterways Section to ascertain whether the placement of mooring buoys and the mooring of vessels at the proposed locations may be safely accomplished and whether the mooring of vessels at the proposed locations will unreasonably or unnecessarily constitute a navigational hazard or otherwise obstruct, impede, or interfere with the navigation of other vessels.

(e) A list of the names or titles of the individuals responsible for the placement and maintenance of the markers along with an address and a contact telephone number for each individual.

(f) If the application is for regulatory markers, the applicant must include proof of the lawful imposition of a regulation or restriction on the speed or operation of vessels for which the regulatory markers are proposed, as follows:

1. For regulatory markers to implement boating-restricted areas established by a municipal or county ordinance:

- a. A copy of an ordinance adopted pursuant to Section 327.46(1)(b), F.S., which imposes the restriction for reasons of vessel traffic safety or public safety; or
- b. A copy of an ordinance approved by the commission pursuant to Section 327.46(1)(c), F.S.; or
- c. A copy of an ordinance approved by the commission pursuant to Section 379.2431(2)(p), F.S., such approval shall be coordinated through the commission's Imperiled Species Management Section.

2. For all other regulatory markers, a copy of the statute, special act, rule, regulation, order, or other instrument which imposes the regulation or restriction and a statement of the specific authority under which the restriction is imposed.

*Rulemaking Authority 327.04, 327.40, 327.41 FS. Law Implemented 327.40, 327.41 FS. History--New 12-23-01, Amended 10-5-06, 10-6-10.*

#### **68D-23.105 Criteria for Approval of Markers.**

(1) Upon receipt of a completed application, the Boating and Waterways Section will determine:

(a) For all markers, whether or not:

1. The proposed markers conform to the United States Aids to Navigation System and this chapter.
2. The proposed markers, if placed in the proposed locations, would create an unreasonable hazard to navigation.

(b) For regulatory markers only, determine whether or not:

1. The markers as proposed would clearly mark the location in which the regulation or restriction is in effect and adequately notice mariners of the regulation or restriction imposed on vessel speed or operation.
2. The regulation or restriction to be implemented by the proposed markers and the message to be displayed thereon are supported by statute, special act, rule, ordinance, or other enactment or order.



(c) For danger markers, isolated danger marks, or inland obstruction marks only, whether or not the danger, hazard to navigation, or obstruction actually exists and, if so, whether or not there are a proper number of markers proposed to be installed in proper locations so that mariners are given adequate notice of the danger, hazard to navigation, or obstruction.

(d) For lateral marks, preferred channel marks, or safe water marks only, whether or not there are a proper number of markers proposed to be installed in proper locations so that the boating public is given adequate notice of channel, preferred channel, fairway, or safe water area.

(e) For mooring buoys only, whether the placement of mooring buoys and the mooring of vessel at the proposed locations may be safely accomplished and whether the mooring of vessels at the proposed locations will unreasonably or unnecessarily constitute a navigational hazard or otherwise obstruct, impede, or interfere with the navigation of other vessels.

(f) For special marks only, whether or not there are a proper number of markers proposed to be installed in proper locations so that the boating public is given adequate notice of the area's or feature's nature, location, and boundaries.

(2) The Boating and Waterways Section is authorized to consult, coordinate, or cooperate with any other governmental entity having concurrent jurisdiction over the waters for which the permit is applied.

*Rulemaking Authority: 327.40, 327.41 FS. Law Implemented 327.40, 327.41, 379.2431 FS. History--New 12-23-01, Amended 10-6-10.*

#### **68D-23.106 Marker Placement Requirements.**

(1) All persons placing or maintaining in place any markers must comply with the following requirements:

(a) Placement of these markers must be exactly as requested in the application. Any deviation will require that the permittee apply to have the permit amended.

(b) The permittee must display the permit number (except as provided below) on each marker and the ordinance number, code section number, statute number, regulation or rule number (etc.) on each regulatory marker. These numbers must be displayed in black, block characters approximately one inch in height.

1. On all regulatory markers, the permit number must be displayed in the lower left corner on the face of each regulatory marker. The ordinance number, code section number, statute number, regulation or rule number (etc.) must be displayed in the lower right corner on the face of each regulatory marker.

2. On all markers other than regulatory markers, the permit number must be displayed on the marker at any location on the marker where it can easily be read, including the reverse side of a sign, provided that it does not interfere with the message of the marker.

3. Information markers placed by counties, municipalities, or other governmental entities on inland lakes and their associated canals are exempt from permitting under this rule. Such markers, if not permitted, must display in lieu of a permit number, the name of the county, municipality, or other governmental entity that placed the marker.

(c) Upon completion of the installation of markers, the permittee must notify the Boating and Waterways Section in writing within 30 days. If the latitude and longitude of each marker, as installed, is different from that listed in the application, this notification must include the correct latitude and longitude in degrees and decimal minutes as referenced to the WGS-84 datum along with a request for the permit to be amended.

(d) All markers must be maintained in proper condition at all times. A discrepancy exists whenever a marker is not exactly as described in the approved application or is destroyed, damaged, moved, or is otherwise unserviceable or not watching properly. The permittee must immediately report any discrepancy in the marker to the Boating and Waterways Section by telephone, telefacsimile or other similarly rapid means of communication. The permittee must correct any discrepancy within not more than 30 days and must notify the Boating and Waterways Section when the correction is accomplished.

(e) A permit for the placement of a marker does not authorize any invasion of private rights, nor grant any exclusive privileges, nor does it obviate the necessity of complying with any other federal, state or local laws or regulations.

(f) All permits issued pursuant to this chapter are contingent upon the consent of and, if necessary, the issuance of appropriate permits by the United States Army Corps of Engineers authorizing the placement of structures for the support of the proposed markers. Consent may be by nationwide permit, regional permit, letter permit, authorization letter, statement of no objection, or other similar means.

(g) All permits issued pursuant to this chapter are contingent upon the consent of and, if necessary, the issuance of appropriate permits by the United States Coast Guard authorizing the establishment of private aids to navigation pursuant to Part 66 of Title 33 of the Code of Federal Regulations.

(h) It is unlawful to place markers, buoys, or signs on submerged lands, or other property or structure not owned by the person or governmental entity placing them without first receiving the written consent of the owner of the submerged lands, other property, or structure to the placement of said markers, buoys, or signs. For markers, buoys, or signs placed pursuant to a permit issued under this rule, the permit is contingent upon the permittee providing a copy of such consent to the Boating and Waterways Section.

(i) By accepting any permit and placing the markers authorized therein, the permittee, to the extent authorized by law, agrees and promises to hold harmless the State of Florida and its agencies, employees, agents, or successors from fault with respect to any claim or claims arising from alleged negligence in the placement, maintenance, operation and removal of any and all markers placed by the permittee pursuant to such permit. The permittee further agrees to indemnify the State of Florida for any and all legal fees and costs incurred in defense of any suit brought against the State as a result of alleged negligence by the permittee in the placement, maintenance, operation or removal of the markers.

(2) Additional requirements for regulatory markers.

(a) All regulatory markers must be supported by a statute, special act, rule, regulation, ordinance, order, or other similar regulatory instrument which imposes the restriction displayed on the marker.

(b) If the regulatory instrument supporting a regulatory marker is amended or if it is repealed, rescinded, revoked, or otherwise becomes a nullity, the permit holder must within 30 days notify the Boating and Waterways Section of the change and must also:

1. In the case of an amendment to the regulatory instrument, file an amended permit application showing the markers that will be removed, replaced, modified, or added in order to implement the amendment to the regulatory instrument.

2. In the case of the repeal, rescission, revocation, or other nullification of the regulatory instrument, remove from the waters of this state and the shores thereof all regulatory markers implementing that regulatory instrument.

(c) Applicants for permits to place regulatory markers or the governmental entities establishing the rules, ordinances, or other actions imposing the regulations must provide for the enforcement of regulations or operating restrictions noticed by said markers. The issuance of a permit authorizing the placement of regulatory markers does not obligate the Fish and Wildlife Conservation Commission or its officers to enforce the regulations or operating restrictions noticed by said markers.

(3) After obtaining the requested permit, the permittee must install, inspect, maintain, and remove the permitted marker at its own expense and as directed by the Boating and Waterways Section.

(4) Discontinuance and removal. Any permitted waterway marker may be discontinued and removed by the permittee owner after 30 days notice to the Boating and Waterways Section. Upon completion of the removal of the marker, the permittee must notify the Boating and Waterways Section in writing within 30 days.

(5) The division and its officers and all other law enforcement officers charged with the enforcement of Chapter 327, F.S., have the authority to remove or cause the removal of any marker found in violation of the requirements imposed under this section or conditions imposed in the permit authorizing the placement of the marker if the violation is not corrected within 30 days following notification of the permittee of the violation.

*Rulemaking Authority 327.04, 327.40, 327.41 FS. Law Implemented 327.40, 327.41, 327.70 FS. History—New 12-23-01, Amended 10-5-06, 10-6-10.*

**68D-23.107 Federal System Adopted.**

(1) The following are adopted and incorporated by reference:

(a) The United States Aids to Navigation System, Part 62 of Title 33 of the Code of Federal Regulations (April 1, 2010);

(b) The United States Coast Guard Aids to Navigation Manual – Administration (COMDTINST M16500.7A, March 2, 2005);

(c) The United States Coast Guard Aids to Navigation Manual – Technical (COMDTINST M16500.3A, February 11, 2005).

(d) The United States Coast Guard Aids to Navigation Manual – Structures (COMDTINST M16500.25, November 7, 2005).

(2) All markers, including mooring buoys, placed or maintained in, on or over the waters of the state or the shores thereof must conform to the United States Aids to Navigation System.

(a) Any marker in, on or over the waters of the state or the shores thereof that does not conform to the United States Aids to Navigation System and all provisions of this chapter, must be brought into conformity or be removed from the waters or shores of the state.

(b) No person, municipality, county, or other governmental entity shall place, maintain, or permit to remain in, on or over the waters of the state or shores thereof any nonconforming marker.

(c) All nonconforming markers in place in, on or over the waters of the state or shores thereof are declared a nuisance. The

division and its officers and all other law enforcement officers charged with the enforcement of Chapter 327, F.S., have the authority to remove or cause the removal of any such nonconforming marker.

*Rulemaking Authority 327.04, 327.40, 327.41 FS. Law Implemented 327.40, 327.41 FS. History--New 12-23-01, Amended 10-5-06, 10-6-10.*

#### **68D-23.108 Specifications for Markers.**

(1) A marker placed in, on or over the waters of the state or shores thereof may be displayed as a buoy bearing letters, numbers or a symbol on its surface, or as a sign mounted on a buoy, piling or other structure, or as a sign on the shore.

(2) Buoyed signs and markers must extend not less than 36 inches above the surface of the water. A sign suspended above the water must have a minimum of 25 feet clearance from the mean high water mark to the bottom of the sign.

(3) A buoy whose sole purpose is to carry a sign above it shall be marked with three horizontal bands of international orange alternating with two horizontal bands of white, each band placed completely around the circumference of the buoy and occupying approximately one-fifth of the total area of the buoy's surface above the waterline. All markers shall be made of materials which will retain, despite exposure to weather and other elements, their color, shape, legibility and position.

(4) All letters on green or black backgrounds shall be white. All letters and numerals on red or white backgrounds shall be black, except that white retroreflective letters and numerals may be used on a red background. All letters and numerals shall be of block characters of good proportion, spaced in a manner which will provide maximum legibility and of a size proportionate to the size of the marker.

(5) Retroreflective materials must be used for all displays on markers that are required to be international orange and as otherwise required in the United States Coast Guard Aids to Navigation Manual – Technical (COMDTINST M16500.3A). The white background dayboard film material for all information, danger, exclusion, and regulatory signs installed or replaced after July 1, 2006, shall be retroreflective. Retroreflective materials may be used for any other portion of a marker.

(6) Every pile used in waters of this state to support signs for waterway marking purposes must have two bands of white tape placed around it. The bands of tape must be placed separately around each pile for dolphins, clusters, and other structures using multiple piles for support. The tape must be six inches wide and made of self-adhesive (pressure sensitive), diamond-grade, white, retroreflective material. The top of the first band must be placed six inches from the bottom of the sign; the top of the second band must be placed eight inches from the bottom of the first band. The tape must be installed with a minimum overlap of one inch over the entire six-inch width of the band. On wooden piles, the tape must be additionally secured using not less than four stainless steel, one inch staples driven through the area of the overlap. If the tape becomes delaminated, cracked, checked, weathered, or abraded so as to have a dull or roughened surface, it must be replaced. Any existing tape must be removed before applying the replacement tape.

(7) All buoys other than mooring buoys must be attached to the water body bottom using anchors, sinkers, chains, shackles, swivels, and bridles that meet or exceed the specifications in the United States Coast Guard Aids to Navigation Manual – Technical (COMDTINST M16500.3A).

(8) Mooring buoys are white cylindrical or spherical with a blue band located near the top of the buoy. All mooring buoys must be attached to the water body bottom using anchors, chains, shackles, and swivels, and must be equipped with pennants that are of sufficient size, strength, and holding power for their intended purpose. Anchors or anchoring systems for mooring buoys must be embed in the water body bottom. The use of a sinker (a weight, usually metal or concrete, that rests on the bottom without embedding) to anchor a mooring buoy is prohibited.

*Rulemaking Authority 327.40, 327.41 FS. Law Implemented 327.40, 327.41 FS. History--New 12-23-01, Amended 10-5-06, 10-6-10.*

#### **68D-23.109 Additional Specifications for Information, Danger, and Regulatory Markers.**

(1) All information, danger, and regulatory markers shall be white in color and shall display international orange symbols.

(2) When a buoy is used as an information, danger, or regulatory marker, it shall be white with horizontal bands of international orange placed completely around the circumference of the buoy. One band shall be at the top of the buoy body, the second band shall be placed sufficiently just above the waterline so that both international orange bands are clearly visible to approaching vessels. The international orange bands shall be not less than two inches in width. The display area shall be that portion of the buoy body between the bands and shall be white. Symbols shall be centered between the international orange bands. Only a cylindrical buoy may be used. The buoy shall have a diameter of not less than nine inches.

(3) When a sign is used for an information, danger, or regulatory marker it must be white with an international orange border.

The display area is that portion of the sign within the border. Symbols must be centered within the display area. The size of the sign must be appropriate to the size of the waterway where the sign is located and the nature of the vessels transiting the waterway, however, no such sign shall be smaller than three feet by three feet.

(a) Information or regulatory marker signs shall be rectangular.

(b) Danger marker signs shall be rectangular or diamond-shaped (a square sign rotated 45 degrees so that one corner is pointed straight down). If a diamond-shaped sign is used, the international orange border shall serve as the vertical open-faced diamond symbol and no additional symbol shall be displayed.

(4) Specifications for Display of Symbols.

(a) The thickness of the international orange line used to draw the borders and the symbols shall be not less than 2 inches.

(b) The height of the symbol shall be at least half and not more than two-thirds the height of the display area.

(c) The sides of the diamond shape shall slope at a thirty to forty-five degree angle from the vertical on a plane surface. Appropriate adjustments for curvature shall be made when applied to a cylindrical surface.

(d) In addition to the permit number required to be displayed under subsection 68D-23.106(1), F.A.C., every regulatory marker shall display the number of the statute, special act, rule, ordinance, or other governmental action that created the boating restricted area or other operating restriction, and the name of the municipality, county or other governmental agency which placed and maintains the marker. This number and name shall be displayed in characters not less than one inch in height and shall be placed in the lower right hand corner of the display area on each sign, and at any location on each buoy where it can easily be read, provided that it shall not interfere with the message of the marker.

*Rulemaking Authority 327.04, 327.40, 327.41 FS. Law Implemented 327.40, 327.41 FS. History—New 12-23-01, Amended 10-5-06, 10-6-10.*

#### **68D-23.110 Inspections and Certification.**

(1) Each person holding a permit to place and maintain one or more markers must inspect all markers for which the permit was issued triennially (every three years).

(2) The required inspection must be documented in writing and must include the following:

(a) The name of the permit holder and permit number of the markers being inspected;

(b) The name of the person or persons currently responsible for the placement and maintenance of the markers; and

(c) A photograph of each marker taken in close enough proximity to legibly show all symbols, borders, and letters and numbers, including the text of any message, the permit number, and the ordinance number, code section number, statute number, regulation or rule number, (etc.). For marker installations with two or more signs, a sufficient number of photographs must be taken to legibly show the information on each sign. Digital photography is acceptable for this purpose. Photographs must be labeled with the location of the marker depicted and the date the photograph was taken.

(d) A statement certifying that the markers placed pursuant to the permit have been inspected during the ninety days preceding the statement and that:

1. The markers are properly maintained and in serviceable condition;

2. The markers conform to the requirements of this chapter;

3. The markers are still properly on station; and

4. The date or dates on which the markers were inspected.

(3) The permit holder must maintain the inspection documentation until it is replaced by a subsequent inspection and documentation. The inspection documentation must be available for inspection by any law enforcement officer during the permittee's normal business hours. Failure to inspect a marker and to maintain documentation of the results of the inspection during the specified time period is grounds for rescinding the permit authorizing placement of the marker and for removing or ordering the removal of the marker.

(4) Dayboard and buoy surfaces and dayboard backing materials will deteriorate because of the effects of weathering. Wind, rain, freezing temperatures, and sunlight cause delamination (separation), cracking, peeling, and fading. Attention must be given to these conditions during inspections.

(a) Markers will be considered discrepant under the following guidelines:

1. Backing materials. Delamination of the plies on a plywood dayboard backing must not effect more than 25 percent of the surface area. Any warpage must not visibly detract from the signal or message presented to the mariner. The backing must not be softened or otherwise deteriorated around the mounting points to a degree that the board could come loose in a storm typical for the

area in which the marker is placed.

2. Elastomeric films, numerals, letters, symbols, and borders. Delamination of films and retroreflective markings on dayboards and buoys must not affect more than 10 percent of the surface of the material. Films and retroreflective markings must not be cracked, checked, weathered, or abraded so as to have a dull or roughened surface. Peeling of the film or markings from the dayboard or buoy must not affect more than 10 percent of the surface area. Letters, numerals, symbols, and borders must not be faded or weathered so as to visibly detract from the signal or message presented to the mariner.

(b) A dayboard or buoy must be replaced if any of the deteriorations noted above is observed or, if for any reason, it cannot function as intended (including significant fading or other discoloration) until the next regularly scheduled inspection. Onsite repairs are permitted if they do not interfere with or detract from the intended signal function of the marker.

(5) Within 5 business days following the completion of the triennial inspection, the permittee must notify the Boating and Waterways Section that the inspection has been performed and whether or not any markers were determined to be discrepant. All discrepancies documented during an inspection must be reported to the Boating and Waterways Section and corrected within 30 days, as provided in paragraph 68D-23.106(1)(d), F.A.C.

*Rulemaking Authority 327.04, 327.40, 327.41 FS. Law Implemented 327.40, 327.41, 379.2431 FS. History—New 12-23-01, Amended 10-5-06, 10-6-10.*

#### **68D-23.111 Enforcement.**

This chapter shall be enforced by the division and its officers, the sheriffs of the various counties and their deputies, municipal police officers, and any other law enforcement officer as defined in Section 943.10, F.S., as provided in Section 327.70, F.S., all of whom shall have the authority to remove or cause the removal of any marker found to be in violation of this chapter.

*Rulemaking Authority 327.40, 327.41 FS. Law Implemented 327.22, 327.40, 327.41, 327.46, 327.60, 327.70, 379.2431 FS. History—New 12-23-01, Amended 10-6-10.*

#### **68D-23.112 Exemptions.**

(1) Nothing herein shall apply to the United States Government or its agencies, nor to any aid to navigation, marker, mooring buoy, or other similar device placed thereby.

(2) Persons establishing private aids to navigation other than regulatory markers and mooring buoys on waters of concurrent state/federal jurisdiction pursuant to the provisions of 33 CFR § 66.01 may submit to the Boating and Waterways Section a copy of their United States Coast Guard permit (CG-2554) in lieu of the materials required under Rule 68D-23.104, F.A.C. Upon receipt by this section of said copy of their permit, such private aids to navigation are exempt from further permitting and need not display a permit number.

(3) Every regulatory marker without a properly displayed permit number, in place in, on or over the waters of the state or shores thereof is declared a nuisance. The division and its officers and all other law enforcement officers charged with the enforcement of Chapter 327, F.S., have the authority to remove or cause the removal of any unpermitted regulatory marker. Markers authorized by the former Florida Department of Natural Resources prior to January 1, 1988, for which no permit number was assigned shall be issued a permit number upon receipt by the Boating and Waterways Section of the following:

(a) A copy of the correspondence authorizing placement of said markers;

(b) A statement of the specifications for the markers, including:

1. A list of the markers;

2. A description giving each marker's size and message;

3. The latitude and longitude coordinates in degrees and decimal minutes of the location of each marker and the datum in which those coordinates are expressed;

4. A statement that the markers have been inspected during the ninety days preceding the instant request and that:

a. The markers are properly maintained and in serviceable condition;

b. The markers conform to the requirements of this chapter;

c. The markers are still properly on station; and

d. The date or dates on which the markers were inspected.

(4) Counties, municipalities and other government entities are exempt from permitting under this chapter only when placing information markers on inland lakes and their associated canals. However, nothing herein shall prevent counties, municipalities or

other governmental entities from choosing to voluntarily apply for waterway marker permits for such information markers.

(5) The restrictions displayed on regulatory markers shall not apply:

(a) In the case of an emergency;

(b) To law enforcement patrol vessels or firefighting vessels; or

(c) To any rescue vessel owned or operated by a governmental entity.

*Rulemaking Authority 327.04, 327.40, 327.41, 327.71 FS. Law Implemented 327.40, 327.41, 327.46, 327.71, 379.2431 FS. History—New 12-23-01, Amended 10-5-06, 10-6-10.*